



Services Agreement

Agreement Number: 02162023-1

Issued: 02/16/2023

Page 1 of 6

Client: Tippecanoe County Health Department
Attn: Gregory Loomis, MD
1950 S 18th Street
Lafayette, IN 47904
Phone: (812) 305-1464
Email: GLoomis@tippecanoe.in.gov

HealthCall, LLC
9800 Connecticut Drive
Crown Point, IN 46307
(219) 476-3459

Services Agreement

HealthCall, LLC an Indiana Limited liability company ("HealthCall"), hereby agrees to provide to the Client identified above, which agrees to accept and pay for, the services described below on the terms set forth in this Services Agreement and in the Standard Terms and Conditions referenced below.

Non-Recurring Fees

1. HealthCall-PRO™ Licensed Application Set-up

One-Time Fee: \$4,800

HealthCall-PRO™ Care Delivery Platform is a cloud-based software service. Set-up services include the following:

- Initial system configuration including the creation of a Client company account, group(s), named location(s), and program(s).
- Configuration of the Care Delivery platform, care team manager, network, and clinical data repository.
- Includes the setup of two custom SMART Chart Assessments (see next line items for details).
- Includes the setup of two Client User Accounts.
- Please refer to the Standard Terms and Conditions for more detail.

2. Care Programs (optional)

One-Time Fee: \$1,200

Care Programs and Encounter Management tools serve as a guide to following clinical and administrative best practices as directed by the Client. Care Programs are typically designed for specific use-cases such as health screening, population health monitoring, high utilization mitigation, transitional care, and post-surgical care and disease management.

- The set-up of each Care Plan is \$1,200.

3. Custom SMART Chart Assessments (optional)

One-Time Fee: \$450

Custom SMART Chart Assessments are typically designed for specific use-cases where flexibility is critical such as community paramedicine, virtual care, point of crisis care, ET3 and providing alternate care for low acuity medical conditions.

- The set-up of each additional Care Plan is \$450.

4. Additional Client User Accounts

One-Time Fee: \$50

Each user (employed by the Client) accessing the HealthCall platform must have their own User Account. Shared accounts are not allowed for security, legal, and licensing reasons.

- Includes phone and web-based technical training.
- This is a one-time fee that does is only charged once when a new User Account is configured.

5. Integrations and Custom Imports/Exports

Pricing based on integration

HealthCall supports real-time data exchange with information exchanges, EHR systems (electronic health record) and other platforms, and direct import of NEMESIS files. Pricing is determined based on the specification of each integrations. Any changes or customizations outside of the intended scope of work and will be invoiced as a Change Request per line item 8.

6. HealthCall Telehealth Video Service (optional)

One-Time Activation Fee: \$600

The HealthCall secure telehealth video service includes easy one-click launching with no app to download and no registration required. This service is fully integrated within platform enabling logging and tracking of each telehealth session. This is an optional service.

7. Technical Training and Support

Included

Technical training is included in the set-up and conducted via webcast and scheduled as needed.

- Toll-free phone and email technical support in the operation and function of the HealthCall user interface is included in the set-up fee.

8. Change Requests

\$185 per service hour

For change requests and additional work effort outside of the intended scope, HealthCall will charge an hourly rate of \$185 per service hour. Any changes requests will be discussed and approved by the client in advance.

9. Travel & Expenses

Client agrees to reimburse HealthCall for related expenses (travel, lodging, meals, etc.) if necessary in conducting the activities listed above. Any mutually agreed upon travel expenses will be discussed and approved by the client in advance. No travel is anticipated.

10. Note: Data Entry

Data will be entered manually via the HealthCall interface or by secure file upload.

Note: Client will either upload the recipient list via a secure file transfer protocol or use the HealthCall web service.

Item	Description	QTY	Non-Recurring	Total
1	HealthCall-PRO™ Platform Set-up, includes two SMART Chart Assessments, and two User Accounts	1	\$4,800	\$4,800
2	Care Programs	0	\$1,200	\$0
3	Additional SMART Chart Assessment	0	\$450	\$0
4	Additional Client User Accounts	0	\$50	\$0
5	Integrations, Imports/Exports	0	\$600	\$0
6	Telehealth Video Service	1	\$600	\$600

Sub-total of Setup Fees: \$5,400

Monthly Recurring Fees

11. HealthCall-PRO™ Licensed Application

\$1400 per Month

HealthCall-PRO cloud-based Care Delivery platform utilizes the HealthCall network and clinical data repository. The responsive interface is accessible via most workstations, laptops, tablets, and smartphones. Includes licensing and maintenance of the HealthCall network and infrastructure.

Features Include:

- Encounter management tools featuring dialog prompter, assessment repository, decision support tools, narrative notes, and actions check list
- Interactive Dashboard
- Encounter Scheduling
- Document Management
- Medication Tracking
- Report Generator
- LiveCall Recording
- Medical History Record
- Care Network

Also Includes:

- 125 Assessments per month with the use of Telehealth Video Service when applicable.

12. Assessment Fee

\$2.75 per Assessment

The "per Assessment" fee is invoiced when an assessment is conducted. Assessments are accessible within Care Programs, SMART Charts, APR™ system, etc.

- Encounter fee is \$3.80 discounted to \$2.75. \$8.25 is the maximum fee assessed per patient in any one month. For a specific individual, once three (3) or more assessments are conducted (excluding Automated Satisfaction Survey Assessments) within the same billing period (calendar month), the maximum fees charged for assessments will not exceed \$8.25.
- Full access to patient Status, Notes, Contact info, Documents, Medications, Insurance, History, and reports is unhindered regardless of number of assessments conducted.
- Assessment fee includes use of the Telehealth Video Service when applicable.

Additional Optional Services

- 13. Optional: Telehealth Video Service** **Included in Assessment Fee**
Designed for virtual care initiatives, and Emergency Triage, Treatment, and Transport (ET3), HealthCall Telehealth video service provides secure, fully integrated live streaming for up to 4 people. This fee is only charged when used outside of a Program or SMART Chart encounter.
- 14. Optional: HealthCall-APR™ - Automated Patient Response™ Assessments**
HealthCall Automated Patient Response™ (APR) assessments foster the communication of more timely and relevant health information between care providers and patients.
- APR™ Assessments can foster more proactive care while reducing staff labor.
 - Automated telephone and email assessments are included at no additional cost. Other modalities including SMS/text message or USPS mailed letters are invoiced at an additional fee.
 - Text Messaging (SMS). Optional text messaging (SMS) fees may be assessed by mobile phone carriers and will be passed along if assessed. Please estimate \$0.05 per text message.
 - Single-page letters via First Class US Mail. Notifications sent via First Class USPS Mail: includes postage (\$0.55), four-color laser printing, pressure-sealed paper, and processing. Please estimate \$1.29 per letter. Price of service will increase as postal rates increase.
- 15. Optional: Insurance Verification** **\$0.12 per Transaction**
Verify patient insurance in realtime directly within HealthCall. Automatically verify insurance coverage of patients within HealthCall Care Programs, during an import process, or manually as needed. \$0.12 per patient per verification transaction.
- 16. Optional: Patient and Assessment Data Exports** **\$600 per export per month**
Export of patient demographic and assessment data for internal reporting, client reporting or billing needs. Below are examples that HealthCall can deliver to a Secure File Transfer Protocol (SFTP) site.
- JSON files containing encounter report data from collected assessments
 - JSON or CSV files containing patient demographic and specific billing data points
 - PDF files of completed encounter reports signed by authorized client users
 - Any changes to the data provided will need to be approved by HealthCall management and will be invoiced at the hourly rate for Change Requests in line item 8.

Minimum Contract Fee

17. Minimum Contract Fee

The Minimum Contract Fee is based upon the Non-Recurring Fees plus the Monthly Recurring Fees payable per month. The HealthCall monthly fee invoiced will be based upon actual services used or the Monthly Minimum whichever is higher. The initial term ("Initial Term") of this Agreement shall commence on the date last signed by all parties ("Effective Date") and shall continue for a period of 12 months ("Term") following the date on which the HealthCall Licensed Application and related Care Plans (if any) are made available for the Client's use ("Production Date"). The Non-Recurring Fees are payable upon receipt. Recurring Monthly Fees are payable Net-30 upon Production Date. Any travel related expenses will be reimbursed by the client and agreed upon in advance.

18. Term

Monthly Fees are based on a twelve (12) month initial service agreement.

Item	Description	QTY	Term	Unit Price	Monthly Minimum	Total
11	HealthCall-PRO	1	12	\$1,400	\$1,400	\$16,800
12	Assessment Fees	0	12	\$2.75	\$0.00	\$0
13	Video Consultation service	0	12			
14	HealthCall-APR Assessments	0	12			
15	Insurance Verification	0	12			
16	Patient and Assessment Data Exports	0	12			

Estimated Recurring Fees: \$16,800

Estimated Non-Recurring Fees (page 2): \$5,400

Monthly Minimum*: \$1,400.00

Minimum Contract Fee: \$22,200

*The HealthCall monthly fee invoiced will be based upon actual services used or the Monthly Minimum whichever is higher.

Special Terms, Notes, and Requirements

19. Special Terms, Notes, and Requirements

This section is blank.

Accepted and Approved

This Agreement is subject to HealthCall's Terms and Conditions, which more fully describe the services to be provided and set forth additional terms of this Services Agreement. HealthCall's Terms and Conditions are incorporated herein by reference. If the terms of this Service Agreement conflict with those of the Terms and Conditions, the terms set forth in this Services Agreement control. This Agreement shall be effective on the date the Services Agreement is last signed by all parties. CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF, AND AGREES TO BE BOUND BY, THOSE TERMS AND CONDITIONS.

By signing below, each party represents that it has received all necessary approvals required for it to enter into this agreement and intends to be legally bound hereby.

Tippecanoe County Health Department

Signature

Print Name

Title

Date

Purchase Order Number

HealthCall, LLC


Signature

3-13-23
Date

Daniel Hayes, President

Office: (219) 476-3459 x1010

Fax: (219) 769-3205

Main: HealthCall, LLC

9800 Connecticut Drive

Crown Point, IN 46307

Legal: HealthCall, LLC

P.O.Box 1205

Valparaiso, IN 46384

Standard Terms and Conditions to HealthCall, LLC Services Agreement

These Standard Terms and Conditions apply to and are included as part of each Services Agreement between HealthCall, LLC (“HealthCall”) and a Client. Capitalized terms used herein and not otherwise defined are defined in the Services Agreement. References to “the Services Agreement” or this “Agreement” or similar terms mean the Services Agreement, which includes these Standard Terms and Conditions.

1. Definitions.

- (a) **Licensed Application(s)** means each Application referenced in the Services Agreement and each updated, improved or otherwise modified version thereof made available by HealthCall to Client pursuant to this Agreement.
- (b) **Reverse Engineer** means prohibited use of the documentation, Confidential Information and/or any Licensed Application to create, duplicate or emulate any part or function of the Licensed Application where such part or function was developed by HealthCall or licensed by HealthCall from a third party, including the examination or analysis of the Licensed Application to determine its structure, organization, internal design, algorithms or encryption devices.
- (c) **Use** means accessing, displaying or operating in any manner or method all or any portion of a Licensed Application.

2. Grant of License.

Subject to the terms and conditions of this Agreement, HealthCall hereby grants to Client a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable right and license to use the Licensed Applications, and to allow Care Network Members (as hereinafter defined) to use the Licensed Applications as part of the HealthCall Care Network, on the following conditions:

- (a) The Licensed Applications shall be used only in a manner commensurate with the intended uses of such Licensed Applications (as described in any documentation accompanying the Licensed Applications);
- (b) The Licensed Applications shall be used solely for Client’s internal business purposes associated with providing post-discharge patient care management services to such Authorized Users, and not for an Authorized User’s own separate use nor for the benefit of any third party.
- (c) HealthCall specifically reserves for itself the right to grant third parties other than Client similar rights to those granted to Client pursuant to in this Agreement to the Licensed Applications, , and to license the Licensed Applications to third parties upon terms and conditions deemed sufficient to HealthCall in HealthCall’s sole and absolute discretion. Further, this Agreement is non-exclusive and HealthCall specifically reserves the right to enter similar arrangements with third parties other than Client on such terms as shall be acceptable to HealthCall in its sole and absolute discretion.
- (d) Client acknowledges and agrees that, except as expressly provided herein, HealthCall does not grant to Client any other right or license, express or implied, in the Licensed Applications or related intellectual property.
- (e) As used herein, an “Care Network Member” means a hospital, physician group or skilled nursing facility with whom Client enters a written agreement for the provision of post-discharge patient care management services (a “Client Services Agreement”) through the use of one or more of HealthCall’s Licensed Applications.
- (f) The Client has no rights in the Licensed Application except as expressly granted by this Agreement.

3. Services.

HealthCall will provide the Client with the setup, support, maintenance and training services set forth in this Section

- (a) **Set-up Services.** “Project manager(s) will be assigned to the Client to help guide the system set-up process, which process will include the following components, unless otherwise indicated in the Services Agreement:
 - (i) Initial system configuration including the creation of a Client company account, virtual clinic(s), named location(s), and care program(s).
 - (ii) Outpatient monitoring configuration. At the direction of the Client, HealthCall will assist in the design of an appropriate care program(s) and related Health Assessment(s).
 - (iii) Patient outreach campaign configuration of various communication methods which may include the following modalities:
 - Primary, secondary, or tertiary phone contact;
 - In-bound toll-free access number;
 - Email (electronic mail);
 - Text messaging, also know as Short Message Service (SMS);
 - Internet or web-based notification;
 - Facsimile (fax); or
 - Single-page, United States Postal Service (USPS) mail.
 - (iv) Initial draft writing of content and scripts to be communicated via the various communication methods . While HealthCall may share industry practices or efforts employed for other Clients, HealthCall does not offer or provide medical, clinical, behavioral, legal or other professional advise or counsel; therefore, HealthCall recommends that all patient or provider communications be reviewed by appropriate compliance and legal counsel retained by the Client.

Standard Terms and Conditions to HealthCall, LLC Services Agreement

- (v) Instantiate the written content within the printed and text outreach modalities and record the related scripts for use within the audio outreach modalities using the standard HealthCall voice talent.
- (vi) Initial patient data upload of the related patients from the Client's electronic files (patient data can be changed or modified online by authorized users of the Client). HealthCall requires patient data provided in a standard format, as specified by HealthCall, for loading onto the system to eliminate improper syntax, duplicate records, or other non-supported format errors. Client must provide patient data to HealthCall in the standard HealthCall electronic data format, as defined within the specifications supplied by HealthCall (contact support@healthcall.com).
- (vii) Assistance in system administration and user set up.
- (viii) Final system testing and verification.
- (b) **Optional Set Up or Customization Services.** These optional services will be provided only if specified in the Services Agreement.
 - (i) Client-specific branding, which is defined as modifying the webpage content displayed online to reflect the corporate image; however, this shall be limited to only modifying the header area to include the Client's logo and corporate design elements (graphics and colors).
 - (ii) HealthCall to reformat, correct, and verify non-standard patient lists supplied in an electronic format by the Client.
 - (iii) Custom recordings based upon the Client's professional voice talent or staff member(s) for use within the audio outreach modalities.
 - (iv) Caller ID displaying Client's telephone number for all outgoing calls.
 - (v) Creation of unique URL (Internet address) for patient access.
 - (vi) Create a custom integration or configure a standard integration between the HealthCall Application and a third party application to facilitate the importing or exporting of data between the two systems.
 - (vii) Extensive customization of the outpatient monitoring, care program(s), Health Assessment(s), or outreach campaign(s) beyond the standard configuration is available. Service customization beyond the standard configuration is also available.
- (c) **Application Services.** The application services for the Application referenced in the Services Agreement include:
 - (i) Licensing and operations of the Application, including all hardware, software, and network infrastructure required to support the application (other than typical commercial hardware and software located at Client's premises and used to access the Internet, which Client must provide).
 - (ii) Maintenance and support for the software as well as maintenance and hosting of the HealthCall patent-pending, proprietary technology.
- (d) **Support Services.**
 - (i) Standard Support. HealthCall will provide support by telephone and by electronic mail at the e-mail address set forth below. The technical support e-mail address and phone line will be staffed by a HealthCall technical support representative during the hours of 8:00 a.m. to 5:00 p.m. (Central Time) Monday through Friday, excluding holidays scheduled by HealthCall ("Normal Business Hours"), subject to modification by HealthCall at HealthCall's reasonable discretion.
 - Support Phone: 219-476-3459
 - Support Email: support@healthcall.com
 - (i) Response. In the case of an error(s), Client shall promptly notify HealthCall and provide HealthCall with all available information in written and/or electronic form so that HealthCall can reproduce the error(s). HealthCall's sole obligation is to undertake commercially reasonable efforts to correct the error(s) reported to HealthCall during the Term. HealthCall will, upon receipt of notice of a error(s), contact the Client to verify such error(s) and begin a resolution process. Upon HealthCall's certification that such error(s) is caused by the Application or by Services provided by HealthCall, HealthCall may provide the Client with a temporary method of using the Application, initiate a temporary 'workaround', or resolve such error(s), normally within 48 hours.
- (e) **Training Services.** Application training services for the Client's personnel will be provided via:
 - (i) Two training sessions for up to 10 Client staff members. Training will utilize online web-based conference technology to support remote training sessions.
 - (ii) Training materials including up to 10 copies of the application users manual.
 - (iii) Patient training program. HealthCall will train the Client's staff members who in turn will train the patients. This activity typically includes the following:
 - Patient training script,
 - Patient enrollment method,
 - Health Assessment example material, and
 - Example Patient Letters.
- (f) **Additional Services.** Before providing any other products or services, HealthCall will provide to the Client, and the Client must acknowledge and accept in writing, the price of such products or services. Unless otherwise specified, payment will be due upon delivery or completion of such products or services.

- (g) **Appropriate Safeguards.** HealthCall shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that HealthCall creates, receives, maintain or transmits on behalf of Client in a HIPAA compliant manner.

4. Fees and Payment.

- (a) **Fees Payable.** Client shall pay HealthCall the license and other applicable fees and charges as set forth in Services Agreement attached hereto and incorporated herein by reference, and/or in any schedules subsequently added by amendment to this Agreement. All fees shall be payable in US currency.
- (b) **Timing of Payments.** For setup services, HealthCall will invoice the Client on the date of the Services Agreement. For monthly services and any other charges, HealthCall will invoice the Client on the first day of the following month the service is delivered. The Client shall pay on or before the 25th day of the month. For example, fees for services provided during January or for services delivered January 1 through January 31 shall be invoiced on February 1 and due February 25. Unless otherwise agreed, invoices for any other products or services will be sent following delivery or completion of the service and will be due and payable in full within 25 days. All fees are non-cancelable and non-refundable, and are payable in U.S. dollars via check, wire transfer or other mutually acceptable payment method.
- (c) **Taxes.** Client shall be solely responsible for all taxes resulting from its execution of this Agreement and its use of the Licensed Applications hereunder, including without limitation any sales, use and/or value-added taxes, and agrees to indemnify and hold HealthCall harmless from all claims and liabilities arising from Client's failure to report or pay such taxes or additional charges.
- (d) **Late Charges.** Any payments not made by the date due will be subject to a late charge of 1.5% interest (with 18% annual aggregate) per month of the amount of the late payment. In addition to remedies expressed in Section 11, if payment is more than 15 days late, in addition to the late charge, HealthCall may suspend further Services until all payments are current.
- (e) **Additional Charges.** Before providing any products or services not specified in the Services Agreement, HealthCall will provide to the Client, and the Client must acknowledge and accept in writing, the fees for such items.
- (f) **Ordering.** Client will submit orders for License Application(s) and services to HealthCall's Contact in a written form reasonably acceptable to HealthCall. Any terms or conditions set out in any ordering or purchasing document provided by Client to HealthCall other than order specific terms necessary to describe the purchase such as License Application(s) ordered and the quantity of each are expressly excluded, void and of no effect.

5. Client Obligations.

- (a) **Information and Access.** Client will provide to HealthCall information on each of its patients for whom Services will be provided at any time and shall keep that information updated on a regular basis by adding new patients, correcting erroneous information as needed, or deleting former patients. Client will provide that information electronically in a format reasonably requested by HealthCall. In addition, Client will allow HealthCall sufficient access to the Client's patient and supply software systems to provide accurate, complete, and unfiltered order information for billing and patient contact schedule update purposes. Client will inform HealthCall in writing of any limitations or restrictions regarding telephone contact that are requested or to which Client has agreed.
- (b) **Compliance with Laws.** Client will comply with all applicable laws, statutes, ordinances, and regulations. Except as otherwise expressly provided herein, the Client will bear all the costs associated with the performance of its duties hereunder.
- (c) **Intellectual Property.** The Client will ensure that no data or other material provided or made available by the Client to HealthCall for uploading or directly uploaded by the Client's employees or agents will infringe on the intellectual property rights of any third party.
- (d) **HIPAA.** The Client acknowledges that use of the Application will not, in and of itself, satisfy any regulatory requirements that may relate to patient management programs (including, without limitation, any that may apply under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA")), and further acknowledges that it is the Client's sole responsibility to ensure compliance with such requirements.
- (e) **Improper Use of Application and Related Matters.** The Client will not misuse, nor will it allow others to misuse, its access to, and knowledge of the Application and HealthCall's servers to access, tamper with or use the Application or HealthCall's servers in any manner exceeding the Client's scope of authorization. The Client also agrees not to tamper with or attempt to access the proprietary information of other HealthCall clients or alter the application, database structure or introduce any unauthorized computer code in any language on any HealthCall server.
- (f) **Indemnity.** The Client agrees to indemnify, defend and hold HealthCall, its officers, directors, employees, members, shareholders, agents, and representatives harmless from and against any cost, damage, liability or expense (including reasonable attorneys' fees) arising out of (i) any use of the Application by or on behalf of the Client (including authorized use of the Application by HealthCall on behalf of the Client); (ii) any viruses or other malicious code or computer programming routines that are introduced to HealthCall's servers or other computer network systems of HealthCall as a result of data and materials that the Client provides or makes available to HealthCall; (iii) the Client's breach of any of its obligations hereunder or any other negligent actions or willful misconduct by Client; (iv) any claim relating to any alleged or actual violation of any "Do Not Call", "Do Not Email" or similar list (or any instructions from a patient) resulting from any call to any person contacted by

HealthCall while performing the Services; (v) any breach of security by Client; or (vi) any such actions by anyone acting or apparently acting on behalf of or with the Client's authority.

6. Ownership.

(a) Ownership of the Application.

- (i) The parties expressly agree that the Application and all other services, products, consulting work efforts provided by HealthCall hereunder are not "works made for hire" under and as defined in the Copyright Act of 1976, 17 U.S.C. §1 et seq. All right, title and interest in and to such services and products, including but not limited to the Application and all updated, improved or otherwise modified version thereof, will remain the exclusive property of HealthCall, even in the event that Client suggests or provides upgrades or other changes. HealthCall's ownership rights hereunder will include, but not be limited to, its rights in business methods, source code, Application design documentation and any related documentation in any form or media applied by HealthCall or embodied in the development of the Application hereunder as well as HealthCall's expertise, experience or knowledge regarding business operations, clinical monitoring, chronic care, wellness coaching, population management, behavioral modification, database administration, data processing techniques, operating systems, user interfaces, telecommunications processes and network communications that are generally utilized by clients who contract with HealthCall for the Application and the Services hereunder.
- (ii) Except as expressly provided herein, HealthCall does not grant to the Client any other right or license, express or implied, in the Application or related intellectual property. Except as expressly provided herein, the Client will not, and will not allow third parties to, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or Reverse Engineer the Application or obtain possession of any source code or other technical material relating to the Application. The Client hereby agrees to take such additional actions as may be reasonably requested by HealthCall to support HealthCall's ownership rights including patent, copyright, trademark and other claims.

(b) Ownership of Client Data.

- (i) Subject only to Section 6(b)(ii) below, all right, title and interest in and to the information and data generated by the Client's use of the Application and the Services rendered hereunder ("Client Data") will remain the exclusive property of the Client. Upon request, HealthCall will execute and deliver to Client such reasonable Business Associate Agreement as client typically uses to comply with HIPAA; provided, however, that: such Business Associate Agreement may not impose any indemnity obligations on HealthCall nor expand the duties and obligations of "business associate" under HIPAA; and provided further that any indemnification provision any such Business Associate Agreement is hereby declared null, void and superseded by the terms of this Agreement.
- (ii) Provided that the Client Data is aggregated in a manner such that all protected health information (PHI), as defined in HIPAA, is de-identified, and Client is not identified as part of such aggregated data, HealthCall shall own such aggregated Client Data and may use it for any business purpose, including but not limited to system improvement, efficiency tracking, benchmarking, system optimization, report generation, and performance of its obligations hereunder.

(c) Return or Destruction of PHI. Upon termination of this Agreement, HealthCall shall either return or destroy PHI in the possession or control of HealthCall or its agents and subcontractors unless such return or destruction of PHI is not feasible or is opposed by the patient. In that event, HealthCall may retain PHI, provided that HealthCall:

- (i) Continues to comply with the provisions of this Agreement regarding the protection of the PHI for as long as it retains the PHI, and
- (ii) Further limits uses and disclosures of the PHI to those purposes that make the return or destruction of PHI infeasible. The obligations of HealthCall under shall survive the termination or expiration of this Agreement.

(d) Trademark and Copyright Notices. Neither party will use any trademark, trade name, service mark or service name of the other party (the "Mark Holder"), except pursuant to this Agreement and, only if the Mark Holder has previously consented in writing to the manner of such use and approved the materials in which it will appear.

7. Restrictions on Use. The License granted herein is specifically limited in its scope and field of Use.

- (a) Prohibited Uses.** Client shall not: (i) rent, lease, lend, sell, distribute, create derivative works, sublicense or modify any Licensed Application, nor permit any third parties to do so; (ii) Use or allow access to a Licensed Application by a service bureau on any basis, or for patient care by or on behalf of third parties; (iii) tamper with license security mechanisms; (iv) alter, enhance, make derivative works or otherwise modify the Licensed Applications and/or merge any Licensed Application it into another program for use by Client, any third party, or otherwise; (v) Reverse Engineer, disassemble, decompile, translate, or make any attempt to discover the source code or object code or methodology of the Licensed Applications from the any Licensed Application itself, from any other intellectual property included with the Licensed Applications or from the description in any documentation, nor permit any third party to do so; (vi) Use any Licensed Application or part thereof to develop or market any product or service including any function, feature, parameter or application which is functionally similar or equivalent to any part of the Licensed Application which was not already in the public domain; (vii) Use any Licensed Application, documentation or Confidential Information to demonstrate or verify that any proposed or existing competitive product operates similarly, is compatible with, or is the same as any part of a Licensed Application; (viii) compare any part of any Licensed Application, documentation or Confidential Information with a proposed or existing competitive product in order for Client to develop, market or sell any competitive or derivative product for Client's own use or use by others; (ix) Use any Li-

censed Application, documentation or Confidential Information to demonstrate or verify that any proposed or existing competitive product operates similarly, is compatible with, or is the same as any part of a Licensed Application; (x) reveal to any third party any benchmark results comparing any part of a Licensed Application and a potentially competing product; (xi) allow access to any Licensed Application to employees, representatives, agents or contractors of any third party; (xii) sell, assign, license, sublicense, publish, display, distribute or otherwise transfer to a third party the Licensed Applications, any copy thereof, or any right or obligation under this Agreement, in whole or in part; or (xiii) permit any parent, subsidiaries, affiliated entities or other third parties who are not listed in the Services Agreement to use the Licensed Applications. Notwithstanding the foregoing, HEALTHCALL expressly acknowledges that Client may use the Licensed Applications to process patient information of Authorized Users and may share with such Authorized Users such information and the results obtained upon processing such information using the Licensed Applications, in accordance with the licensed granted in Section 2 herein.

- (b) **No Sublicensing or Assignment.** Client may not sublicense, assign, or delegate to any third party any Licensed Application, documentation, Confidential Information or part thereof, or any right or obligation under this Agreement without HealthCall's prior written consent and payment of any applicable fees.
- (c) **Educational Institutions.** If Client is an educational institution, Client shall not use or permit use of any Licensed Application for commercial purposes.
- (d) **Third Parties Rights.** Clients shall not infringe or violate any patent, copyright, trademark, trade secret or other property right of a third party.

8. **Limited Warranties and Limitations on Liability.**

- (a) **Non-infringement Warranty.** HealthCall warrants to Client that the Licensed Applications provided by HealthCall hereunder will not infringe or misappropriate any United States copyright, trademark, patent, or the trade secrets of any third persons. Upon being notified of such a claim, HealthCall shall (i) defend through litigation or obtain through negotiation the right to continue providing such services; (ii) revise the services so as to make them non-infringing while substantially preserving the original functionality. If Client determines that none of the foregoing alternatives could provide an adequate remedy, Client may terminate this Agreement by written notice to HealthCall. HealthCall shall indemnify, defend and hold harmless Client against and in respect to all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, arising from or as a result of HealthCall's breach of this Section 8(a).
- (b) **Limitations on Warranties.** Except as set forth in Section 8(a), above, all products and services offered hereunder by HealthCall are provided on an "AS IS" basis without warranty of any kind. HealthCall DISCLAIMS AND THE CLIENT HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, (A) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, AND (B) ANY WARRANTY OF COMPATIBILITY BETWEEN ANY SYSTEM, EQUIPMENT, SOFTWARE, HARDWARE, OR DATA PROVIDED BY HEALTHCALL AND ANY SYSTEM, EQUIPMENT, SOFTWARE, HARDWARE, OR DATA OWNED, USED, OR PROVIDED BY THE CLIENT. CLIENT AGREES THAT HEALTHCALL WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, EVEN IF ADVISED OF THE RISK OF SUCH DAMAGES IN ADVANCE. If HealthCall should be held liable to the Client for any cause arising out of this Agreement or its breach, including, without limitation, any warranties in Section 8(a), the amount payable by HealthCall, in the aggregate, will not exceed the lesser of (x) the aggregate Fees paid by the Client to HealthCall pursuant to this Agreement during the previous six months, or (y) actual damages incurred. The Client expressly waives its right to collect any greater amount.
- (c) **Time Limitation on Claims.** NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER OR OTHERWISE RELATING IN ANY WAY TO THIS AGREEMENT MAY BE BROUGHT BY THE CLIENT OR HEALTHCALL MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

9. **Confidential Information.**

- (a) **Confidential Information** is information which a party (the "disclosing party") considers confidential and proprietary, including without limitation: all data, materials, products, technology, specifications, manuals, data dictionaries, software, technical information such as computer programs, characterization, formulae, algorithms, process, performance, interface information, proprietary command architecture, proprietary scheme constructs, including commands, format, syntax and semantics, defects, bugs, proprietary data analysis information, logic elements and business information, including confidential future product information, confidential basic concepts, marketing and sales information, sales volume, pricing, accounting information, and other information disclosed or submitted, orally, in writing, or by any other media, by the disclosing party to the other party (the "receiving party"). Confidential Information does not include any information which: (i) was already known to receiving party free of any obligation to keep it confidential at the time of its disclosure by the disclosing party; (ii) is or becomes publicly known through no wrongful act of the receiving party to whom such information was disclosed; (iii) is rightfully received from a third party having no confidentiality obligation with respect to such information provided that the disclosing party acknowledges in writing that such third party has no confidentiality obligation; (iv) is independently developed

by the receiving party, its employee, agent or contractor without use of any Confidential Information of the disclosing party; or (v) was acknowledged in writing by the disclosing party to be non-confidential.

- (b) **Written Consent.** A receiving party shall not, without first obtaining the prior written consent of the disclosing party, disclose the terms and conditions of this Agreement or any Confidential Information of the disclosing party, except as may be required to implement and enforce the terms of this Agreement or as may be required by legal procedures or by law.
- (c) **Trade Secrets.** Client specifically acknowledges that the Licensed Applications contains valuable trade secrets of HealthCall and constitute Confidential Information of HealthCall. Except as expressly authorized under this Agreement, Client shall not use, sell, assign, lease, license, disclose, give or otherwise transfer any Licensed Application, any copy or derivative thereof, or the right to use any Licensed Application, to any other person. Client shall safeguard any and all copies of the Licensed Applications against any unauthorized disclosure and shall take all necessary steps to ensure that the provisions of this Agreement are not violated by any person under its control or in its service. Client agrees to notify HealthCall promptly of any and all circumstances surrounding the unauthorized use, possession or disclosure of the Licensed Application of which Client has knowledge.
- (d) **Client Data.** Except as provided in Section 6(b) and (c), HealthCall will hold Client Data in confidence to the extent required by HIPAA and any Business Associate Agreement with Client.
- (e) **Termination of Agreement.** Upon the termination of this Agreement HealthCall will return to Client, destroy or de-identify all Client Data then in its possession and will not use any such Client Data except to the limited extent provided in Section 6(b) and (c).
- (f) **Surviving Obligation.** The provisions of Section 9 shall survive the termination of this Agreement for any reason.

10. Term.

- (a) **Effective Date.** This Agreement shall be effective on the date the Services Agreement is last signed by all parties (the “**Effective Date**.”)
- (b) **Term.** The date on which HealthCall first contacts the first patient on behalf of Client is referred to herein as the “**Production Date**”; HealthCall will notify Client in writing of the Production Date once it occurs. The initial term (the “**Initial Term**”) of this Agreement shall commence on the Effective Date and shall continue for a period of months following the Production Date which period of months is identified as the “**Term**” in the Services Agreement. [For example, if the Effective Date is January 1, 2020 and the Production Date is March 1, 2020, and the Services Agreement identifies the term as 24 months, then the Initial Term commences on January 1, 2020 and expires on February 28, 2022, 24 months after the Production Date.] After the Initial Term, this Agreement will automatically be renewed for unlimited successive one-year terms (each such term a “**Renewal Term**”), unless either party provides written notice of termination to the other party no less than 60 days prior to the expiration of the Initial Term or any Renewal Term.
- (c) At any time prior to the six (6) month anniversary of the Effective Date, but not thereafter, either party may terminate the Agreement, without cause or penalty, upon written notice to the other party. The notice must be delivered on or before the six (6) month anniversary date of the Effective Date and termination will be effective thirty (30) days thereafter.
- (d) If HealthCall amends these Standard Terms and Conditions pursuant to Section 13(d) and Client does not approve of such amendment, Client may notify HealthCall of such disapproval prior to the date on which such amendment takes effect. If Client notifies HealthCall of such disapproval, then such amendment shall not take effect as to Client, but HealthCall may, at any time thereafter, terminate this Agreement by providing not less than 30 days written notice of such termination to Client.
- (e) HealthCall may terminate this agreement, service and access to the Licensed Application(s) in whole or in part, upon thirty (30) days written notice to Client, if HealthCall decides to discontinue such service, in whole or in part.

11. Termination.

- (a) This Agreement shall terminate automatically:
 - (i) If Client, after having been provided with notice, fails to cure (A) immediately, a breach of any provision of Sections 7 or 5(b) above; (B) within Fifteen (15) days, a breach of payment obligations; or (C) within twenty (20) days, any other material breach of this Agreement; or
 - (ii) Except as otherwise provided in Section 11(b), if HealthCall, having been provided with written notice, fails to cure within thirty (30) days a material breach of this Agreement.
- (b) A Licensed Application’s failure to conform substantially to the specifications in the documentation shall not be deemed a material breach or default but shall be subject to the exclusive remedies provided in Section 3(d). Notwithstanding the foregoing:
 - In the event that Client is unable to Use or access an Application (a “Loss of Use”) as a result of any error caused by the Application or by HealthCall’s Services, and HealthCall is unable to either provide a temporary method of using the Application, initiate a temporary ‘workaround’ or resolve the error(s) causing the Loss of Use within forty-eight (48) hours of receipt of notice of the error(s) from Client pursuant to Section 3(d), then the fees payable by Client with respect to such Application shall abate during the period of time that the Loss of Use of such Application continues.
 - In the event that Client suffers a Loss of Use of an Application as a result of any error(s) caused by the Application or by HealthCall’s Services and HealthCall is unable to resolve the error(s) within thirty (30) days of the date HealthCall

receives notice of the error(s) from Client pursuant to Section 3(d), then Client shall have the right to terminate this Agreement upon thirty (30) days prior written notice to HealthCall.

- (c) It shall be deemed a material breach of this Agreement if Client becomes the subject of any proceeding, voluntary or involuntary, in bankruptcy, liquidation, dissolution, receivership, attachment or composition which proceeding is not dismissed within sixty (60) days, or if Client makes a general assignment for the benefit of creditors. In such event, amounts paid to HealthCall for good and services not yet delivered may be applied in whole or in part in satisfaction of Client's obligations for good and services delivered but yet paid for under this Agreement or any other agreement with HealthCall. Client will be responsible for payment of any charges incurred as of the termination date, as well as other charges incurred by HealthCall as a result of such termination. In addition, Client will be responsible for the termination charges set forth in this agreement and agrees to accelerate the balance due under the Agreement.
- (d) On termination, (i) Client shall immediately cease all use of the Licensed Applications(s), documentation and all content; (ii) HealthCall, at its option, may terminate access to all services, including, but not limited to, the Licensed Application(s), documentation and all content; (iii) Client shall return or destroy all documentation and Confidential Information and such copies and so certify in writing to HealthCall.
- (e) Upon termination of this Agreement pursuant to sections 10(d), 11(a)(i) or 11(c), Client shall pay a termination charge. The termination charge during the Initial Term, or any subsequent Renewal Term, will consist of: (i) the remaining balance of the Minimum Contract Fee associated with the current Term, Initial or Renewal, as listed within the Services Agreement; (ii) all discounts, if any, received by Client; and (iii) the balance due on any equipment leased, third party service contracts or cancellation charges or other third party charges incurred by HealthCall as a result of such cancellation. In addition, Client agrees to accelerate the balance due under the Agreement.
- (f) Termination will not relieve either party from any liability arising from any breach of this Agreement, nor from obligations accruing prior to the date of termination. Termination of this Agreement will be without prejudice to any other right or remedy of either party.
- (g) Notwithstanding the foregoing, the provisions of Sections 6, 7, 8, 9, 11(c), 11(e), 11(f), and 13 shall survive termination of this Agreement.

12. Marketing and Press Releases.

- (a) **References to Client.** If the Client is satisfied with HealthCall's performance of the Services hereunder, HealthCall may, subject to the Client's prior approval, which approval may be granted in Client's sole discretion (i) list the Client as a current client on its website, in press releases, and in other marketing materials; (ii) use the Client as a reference for its products and services; and (iii) publish, with appropriate safeguards for the de-identification of protected health information, a case study that describes how HealthCall's products and services were used to solve the Client's business needs and provide value to the Client.
- (b) **Press Releases.** No press release referencing Client by name will be published unless the parties have mutually agreed to the form and substance of such press release.

13. General.

- (a) **Notices.** All notices, consents, requests, demands and other communications required or permitted under this Agreement: (a) will be in writing; (b) will be sent by messenger, certified or registered U.S. mail, a reliable express delivery service or fax or e-mail (with a copy sent by one of the foregoing means). All such communications will be sent to the addresses or numbers set forth in the Services Agreement, or to such other addresses or numbers as any party may inform the others by giving five business days' prior notice. Notices will be deemed delivered: upon deposit, if sent by overnight courier or by certified or registered U.S. mail with return receipt requested; or upon receipt, in all other cases.
- (b) **Miscellaneous.** The Services Agreement may be executed in several counterparts, each of which is deemed an original but all of which constitute one and the same instrument. This Agreement (i) contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions; (ii) is governed by, and will be construed and enforced in accordance with, the laws of the State of Indiana without giving effect to any conflict of laws rules; and (iii) is binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns.
- (c) **Disclaimer of Reliance.** HEALTHCALL, OR EMPLOYEE(S) OR AGENT(S) OF HEALTHCALL, MAY HAVE MADE STATEMENTS CONCERNING THE LICENSED APPLICATION(S) AND/OR THE USE OR EXPERIENCE OF THIRD PARTIES USING ONE OR MORE LICENSED APPLICATION(S). CLIENT ACKNOWLEDGES THAT ANY SUCH STATEMENTS ARE NOT WARRANTIES, MAY NOT BE RELIED UPON BY CLIENT, AND ARE NOT PART OF THIS AGREEMENT. CLIENT FURTHER ACKNOWLEDGES THAT PAST EXPERIENCES ARE NOT A GUARANTEE OF FUTURE PERFORMANCE OR RESULTS AS TO CLIENT. CLIENT ACKNOWLEDGES THAT IN MAKING AND EXECUTING THIS AGREEMENT, CLIENT HAS NOT RELIED UPON OR BEEN INDUCED BY ANY STATEMENTS OR REPRESENTATIONS OF ANY PERSON OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.
- (d) **Amendment and Waiver.** To be effective, any amendment, supplement or waiver under this Agreement must be in writing and signed by authorized representatives of both parties. Neither the failure of either party to exercise any right, power or rem-

edy provided under this Agreement or to insist upon compliance by any other party with its obligations under this Agreement, nor any custom or practice of the parties at variance with the terms of this Agreement, will constitute a waiver by such party of its right to exercise any such right, power or remedy or to demand such compliance. Client acknowledges that HealthCall is continuing to develop its services and its relationships with its clients and that such items may change in the future. Accordingly, HealthCall may change these Standard Terms and Conditions or details related to the Services at any time. As to changes in these Standard Terms and Conditions, HealthCall will give Client at least 60 days notice of any such change. As to Client, such change will take effect at the end of such 60-day period, subject to Client's rights under Section 10(d). Changes that increase the services provided or that do not materially diminish the Services may be made by HealthCall at any time. The waiver by a party of any breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any subsequent breach or violation hereof.

- (e) **Jurisdiction and Venue.** The federal and state courts within Porter County, Indiana and the Northern District of Indiana, Hammond Division, shall have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement. Each party expressly consents to the personal jurisdiction of and venue in such courts, and service of process effected upon it by registered mail sent to the address set forth herein for each party.
- (f) **Recovery of Fees and Costs.** In the event suit is brought by either party to enforce this Agreement, the prevailing party shall recover costs and expenses, including, without limitation, reasonable attorney's and expert's fees.
- (g) **Cumulative Remedies.** The rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies, which the parties would otherwise have.
- (h) **Severability.** If any provision of this Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be (i) modified to be made valid, enforceable and legal in such a manner as to best effectuate the intent of the parties at the inception of this Agreement, or (ii) be deemed eliminated where such modification is not practicable; the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.
- (i) **Injunctive Relief.** The parties agree that a material breach of this Agreement adversely affecting HealthCall's intellectual property rights (worldwide patents, patent rights, copyrights, trade secrets, trademarks, service marks, and applications for any of the foregoing) in the Licensed Application, documentation or Confidential Information would cause irreparable injury to HealthCall for which monetary damages would not be an adequate remedy and HealthCall shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.
- (j) **Force Majeure.** Neither party to this Agreement will be liable to the other party for any delays in the performance of its obligations or duties due to acts of God, strikes, transportation delays, fires, floods, riots, political uprisings or revolutions, wars, attacks, labor disputes, freight embargoes, shortage of labor, inability to secure fuel or power at reasonable prices or on account of shortages thereof, laws or acts of any federal, state or local government affecting the Application or the conduct of the parties, Internet or telephone disruptions, or any other such causes beyond such party's reasonable control, except in no event will this paragraph apply to any payments due to HealthCall hereunder.
- (k) **Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and their successors, and no other person or entity has, or is entitled to enforce, any rights, benefits or obligations under this Agreement.
- (l) **Relationship of the Parties.** This Agreement does not create and will not be construed as creating any relationship of agency, partnership, or employment between the parties. The parties enter this Agreement as, and will remain, independent parties and independent contractors. Except as otherwise provided in this Agreement, no party will have the right or authority to assume, create, or enlarge any obligation or commitment on behalf of any other, and will not represent itself as having the authority to bind any other in any manner.
- (m) **Descriptive Headings.** Section headings are included herein for convenience only and shall not be considered in interpreting this Agreement.
- (n) **Priority of Agreement.** The provisions of this Agreement take priority over and supersede any conflicting provisions in any exhibit, schedule, document or other agreement between the parties, whether attached hereto, relating to this Agreement or the parties' duties and obligations hereunder, including without limitation any Business Associate Agreement.

The provisions of this Agreement reflect the allocation of risk and the limitation of liability intended by the parties. This agreement is further subject to the provisions of the attached addendum.

Addendum A

(Business Associate Agreement Addendum)

This Business Associate Agreement (“Addendum”) is entered into as of the dates of this End User License Agreement (“Agreement”), by and between the Licensee (“Covered Entity”) and Healthcall, LLC. (“Business Associate”).

WHEREAS, the Business Associate provides telemedicine services to Covered Entity and acknowledges and agrees that it is a Business Associate of Covered Entity within the meaning of HIPAA and the Privacy Rule, each as defined below;

WHEREAS, in connection with the provision of services to the Covered Entity in accordance with the End User License Agreement between the Covered Entity and Business Associate, Business Associate will create, or receive from or on behalf of Covered Entity, or have access to, Protected Health Information (“PHI”), as the term is defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and implementing regulations, including the Standards for Privacy of Individuals Identifiable Health Information at 45 CFR Parts 160 and 164, as may be amended from time to time (collectively, the “Privacy Rule”);

WHEREAS, Licensee, as a “Covered Entity” under HIPAA and the Privacy Rule, is required under the Privacy Rule to enter into an agreement with Business Associates to provide for certain protections for the privacy and security of PHI created or received by Business Associate from or on behalf of the Covered Entity.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained in this Addendum, the delivery and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. Definitions

Capitalized terms used in this Addendum but not otherwise defined herein shall have the meaning as those specified in the Privacy Rule.

2. Obligations of the Business Associate

(a) Permitted Uses and Disclosures.

Except as otherwise limited in this Addendum or the Agreement, the Business Associate may use or disclose PHI as follows:

- (1) Business Associate may use and disclose PHI as permitted in this Addendum or the Agreement as necessary to perform functions, activities or services for or on behalf of Covered Entity pursuant to the Agreement or as required by law, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity. Business Associate shall not use or disclose PHI for any other purpose, except as permitted herein.
- (2) Business Associate may use PHI for the proper management and administration of Business Associate and to carry out its legal responsibilities.
- (3) Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law or the Business Associate otherwise obtains reasonable assurances from the person or entity to whom PHI is disclosed that the person or entity will (i) protect the confidentiality of the PHI, (ii) use or further disclose PHI only as required by law or for the purpose for which it was disclosed to the person or entity, and (iii) notify the Business Associate of any instances of which the person or entity is aware that the confidentiality of the PHI has been breached.
- (4) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities as permitted by the Privacy Rule.
- (5) Business Associate agrees that any agent, including a subcontractor to whom it provides PHI received from or created or received by Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions with respect to such information that apply through this Addendum to Business Associate.
- (6) Business Associate may use PHI to provide Data Aggregation services to the Covered Entity or other entities as permitted by 45 C.F.R. 164.504
- (7) Business Associate shall disclose PHI in accordance with a HIPAA compliant authorization executed by an applicable individual or his or her personal representative.
- (8) Nothing in this Addendum shall be interpreted to prevent Business Associate from disclosing PHI concerning disclosures in the public interest or other permissible uses or disclosures by a business associate as set forth in the Privacy Rule.

(b) Appropriate Safeguards.

- (1) Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that Business Associate creates, receives, maintain or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C.
- (2) Business Associate shall ensure that any agent, including a subcontractor, to whom Business Associate provides PHI agrees to implement reasonable and appropriate safeguards to protect PHI.

Standard Terms and Conditions to HealthCall, LLC Services Agreement

- (3) Business Associate shall report to Covered Entity any security incident of which it becomes aware.
- (c) Minimum Necessary Standard. Except for use by, and disclosures to, a health care provider for treatment payment or operations purposes, Business Associate only will use and disclose the amount of PHI that is the minimum necessary to accomplish the purpose of the use or disclosure.
- (d) Reporting of Improper Use of Disclosure. Business Associate shall report to the Covered Entity in writing any use or disclosure of PHI which were not authorized by this Addendum within three (3) days of becoming aware of such improper use or disclosure.
- (e) Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- (f) Availability of PHI. With respect to any PHI maintained by Business Associate which constitutes a Designated Record Set, Business Associate shall within ten (10) days after receipt of the Covered Entity's request: (i) make such PHI available to the Covered Entity or to individuals identified by the Covered Entity as being entitled to access and copy that PHI to the extent required under the Privacy Rule, and (ii) to make any amendments to PHI that are requested by the Covered Entity or the individual.
- (g) Accounting Rights. Business Associate shall maintain a record of its disclosures of PHI to the same extent such record of disclosures is required under the Privacy Rule if made by the Covered Entity. Business Associate shall provide the record of disclosures as directed by the Covered Entity within ten (10) days after receipt of the Covered Entity's request. For each disclosure that requires an accounting, Business Associate shall maintain the information for six (6) years from the date of the disclosure or such other period Required By Law.
- (h) Return or Destruction of PHI. Upon termination or expiration of this Addendum and the Agreement, Business Associate shall either return or destroy PHI in the possession or control of Business Associate or its agents and subcontractors unless such return or destruction of PHI is not feasible. In that event, Business Associate may retain PHI, provided that Business Associate: (i) continues to comply with the provisions of this Addendum for as long as it retains the PHI, and (ii) further limits uses and disclosures of the PHI to those purposes that make the return or destruction of PHI infeasible. The obligations of Business Associate under shall survive the termination or expiration of this Agreement. If desired, the Business Associate may indefinitely retain patient data in an aggregate form, this non-identifiable patient demographic information cannot contain any PHI. This aggregate information may be used to advance the value of the Licensed Program, for commercial and/or research purposes.
3. Obligations of the Covered Entity
- (a) The Covered Entity acknowledges that the protection of the PHI is a shared responsibility and as such the Covered Entity shall implement appropriate safeguards and shall take necessary steps to limit access of the licensed program to only those individuals who are entitled view PHI as defined by the Privacy Rule.
- (b) The Covered Entity shall notify Business Associate of any limitations in the Covered Entity's ability to use or disclose PHI to the extent such limitation may affect Business Associate's use or disclosure of PHI.
4. Indemnification of the Covered Entity
- (a) Business Associate shall defend, indemnify and hold harmless the Covered Entity, its affiliates, officers, directors, employees and agents, from and against any claims or liabilities, and shall pay all losses, damages, liabilities, claims and actions, and all related expenses (including reasonable attorneys' fees and expenses) based on any breach by Business Associate of any duty or obligation of the Agreement or this Addendum that pertains directly to PHI or the protection of the confidentiality thereof.
5. Term and Termination
- (a) Term. The term of this Addendum shall be effective as of the date written above, and shall terminate contemporaneously with the termination or expiration of the Agreement. Notwithstanding any provisions of the Addendum to the contrary, the Addendum shall terminate contemporaneously with the termination of the Agreement.
- (b) Termination. Notwithstanding anything to the contrary in the Addendum, this Addendum and the Agreement may be terminated by the Covered Entity in the event of the material breach by Business Associate of any term of this Addendum if such breach is not cured by Business Associate within ninety (90) days after Business Associate's receipt of written notice of such breach or immediately if the Covered Entity determines that cure is not possible. If the Covered Entity determines that neither cure nor termination are feasible, the Covered Entity shall report the violation to the Secretary.
6. Miscellaneous
- (a) Interpretation. Any ambiguity in this Addendum will be resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with HIPAA and related state and federal laws and regulations.

**TIPPECANOE COUNTY, INDIANA
ADDITIONAL TERMS AND CONDITIONS**

The attached and forgoing Services Agreement between **The Health Department of Tippecanoe County** (County) and **HealthCall LLC** (Contractor) is amended to incorporate by reference the following terms and conditions. Any provisions in the attached agreement which may be inconsistent with the following provisions shall be ineffective to the extent of any such inconsistency.

Funding for a Multi-year Agreement - In the event that the County is not able to obtain funding, after affirmatively requesting such funding, for the provision of the goods and or services to be provided in accordance with this Agreement, County may terminate this Agreement on thirty (30) days written notice to Contractor. In such event, County agrees that it shall reimburse Contractor for all expenses incurred under this Agreement before written notice of termination is received. Such charges, however, shall not exceed the total purchase price under this Agreement. Contractor and County understand that the funding for a multi-year agreement is done on a year-to-year basis, and this provision applies annually.

Non-Discrimination – Pursuant to IC 22-9-1-10, Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of the covenant may be regarded as a material breach of this Agreement.

Default - If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

Indemnification - The County's obligation to indemnify and hold harmless under the Agreement, if any, shall be limited in substance by state and federal statutes and constitutional provisions designed to protect the exposure and liability of County as a political subdivision of the State of Indiana or otherwise (e.g., actions and conditions as to which County is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the 11th Amendment, and the ability to defeat a claim by reason of contributory negligence of fault of a claimant), so that County's liability and Contractor's liability, if any, resulting from this Agreement, shall not in any case exceed what might have been County's liability to a claimant had County been sued directly by the claimant in Indiana and all appropriate defenses had been raised by County. Neither party shall have an obligation to provide indemnification to the other party for damages arising out of the other party's own negligent behavior.

Limitation of Liability - With the exception of Fees due under the Agreement, either party's

liability to the other party for any cause arising out of the Agreement or its breach shall be limited, in the aggregate, to the lesser of an amount equal to (x) the aggregate Fees paid by County to Contractor pursuant to the Agreement during the previous six months, or (y) actual damages incurred. The Fees due under the Agreement shall be as set forth in the Agreement. Limitations of Liability set forth in the Agreement or in these Additional Terms and Conditions shall not apply to damages arising out of acts or omissions of the parties or their employees, officers, or agents committed outside the scope of the services provided under the Agreement.

Governing Law; Exclusive Jurisdiction; Exclusive Venue - This Agreement is entered into in Indiana and all matters arising under or related to this Agreement shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana. Courts of competent authority located in Tippecanoe County, Indiana shall have sole and exclusive jurisdiction of any action arising out of or in connection with the Agreement, and such courts shall be the sole and exclusive venue for any such action.

Severability - Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Force Majeure - In the event that any party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of such notice of the Force Majeure Event, the party whose ability to perform has not been so affected may be given written notice to terminate this Agreement.

E-Verify Employment Eligibility Verification - In accordance with IC 22-5-1.7, if Contractor has any employees and the E-Verify program as defined in IC 22-5-1.7-3 is in existence, **Contractor** shall enroll in and verify the work eligibility status for all of Contractor's newly hired employees through the E-Verify program. Contractor shall not knowingly employ an unauthorized alien, nor shall Contractor retain an employee that **Contractor** subsequently learns is an unauthorized alien. The undersigned, on behalf of Contractor, hereby certifies that Contractor does not knowingly employ an unauthorized alien at the time of execution.

Contract Reporting Requirements - Contractor understands and acknowledges that the County is a "public agency" within the meaning of Indiana's Access to Public Records Act and, as such, the agreement or other contract between the parties may be subject to disclosure as a public record under IC 5-14-3. Contractor further understands and acknowledges that, under IC 5-14-3.8-3.5, if the amount to be paid during a calendar year by the County under the contract exceeds fifty-thousand dollars (\$50,000), the County will be required to scan and upload the digital image

of the contract to the "Indiana transparency Internet web site."

Anti-Nepotism Requirements - Contractor hereby certifies either: a) Contractor is not a relative of an elected official (as defined by IC 36-1-21) of Tippecanoe County and is not a business that is wholly or partially owned by a relative of an elected official of Tippecanoe County; or b) the requirements set forth in IC 36-1-21-5(b) have been satisfied.

Confidentiality. Notwithstanding the notation of "Confidential" in the footer of the Service Agreement and the Standard Terms and Conditions to HealthCall, LLC Services Agreement, the parties acknowledge and agree that County is a public entity subject to Indiana's Access to Public Records Act ("APRA") (IC 5-14-3), that the fees due under the Service Agreement will be paid with public funds, and, therefore, the Service Agreement is a public document under APRA.

ACCEPTED:

ACCEPTED:

TIPPECANOE COUNTY HEALTH DEPT.
1950 S. 18th Street
Lafayette, IN 47904

HealthCall, LLC
9800 Connecticut Drive
Crown Point, IN 46307

By: _____

Title: _____

Date: _____

By: 

Title: PRESIDENT & CEO

Date: 3-13-2023